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## **Idaho Conservation League**

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November 9, 2010

**RE: Idaho Conservation League Scoping Comments on the Clear Creek Culverts Replacements, Clear Creek Pre-Commercial Thinning, Winter Range Browse Improvement, Tree Planting on Decommissioned Roads, Blackfoot Telephone Coop SUP Renewal and Building, and Teepee Face Road Use Permit, along with comments on the Chucker's Lode, Max #2, Bear Track #2, and Imperial Creek Placer Exploration projects**

Dear Marty,

Thank you for considering our comments on these projects. For over thirty years, the Idaho Conservation League has worked to protect Idaho's clean water, wilderness, and quality of life through citizen action, public education, and professional advocacy. For more information or to become a member, visit [www.idahoconservation.org](http://www.idahoconservation.org). As Idaho's leading voice for conservation organization we represent over 9,500 members, many of whom have a deep personal interest in protecting our water, wildlands, and wildlife for future generations of Idahoans.

We are interested in staying on the mailing list for each of the projects listed in the October 5, 2010 letter detailing 13 separate CE project proposals. In general, we do not have significant concerns with 7 of these projects and feel that CEs are appropriate to consider the effects for most of these projects. For the remaining 6 projects, we do have questions and encourage you to closely evaluate the propriety of considering these projects pursuant to CE authorities.

After a review of the proposed activities, we feel that proposed mining exploration is subject to the order issued by the US District Court for the Eastern District of California in Case No. CIV F-03-6386JKS. Specifically, District Court Judge Singleton ordered that gathering geophysical data, trenching and clearing vegetation for sight paths in association with geophysical investigations were subject to notice, comment and appeal regulations pursuant to the Appeals Reform Act, Forest Service regulations and 36 CFR 215. In the scoping notice, the minerals

exploration activities include trenching, digging pits, clearing trees, washing gravels, land application of process wastewater, minor roadwork, and other activities. These activities would appear to fall within the categories outlined in the Singleton Decision (referenced in the scoping notice) including: gathering geophysical data, trenching and clearing vegetation for support facilities for mineral investigation. As such, we encourage you to reconsider scoping these projects pursuant to 36 CFR 215.

We do appreciate that the scoping notice was more robust and differentiated between appealable and non-appealable decisions.

With regards to the Salmon River Wind Research project, the analysis should consider consistency with eligible wild and scenic rivers. We appreciate that no permanent structures will be constructed and that equipment will be delivered via existing roads and trails.

Additional comments on the proposed mineral exploration projects are provided below.

Once again we thank you for the opportunity to submit comments on these projects. Please send us any subsequent documents for these projects. We look forward to continuing to work with the Forest Service on these and other projects in the future.

Sincerely,

/s/Jonathan Oppenheimer

Jonathan Oppenheimer  
Senior Conservation Associate

## Idaho Conservation League Comments on the Chucker's Lode, Max #2, Bear Track #2, and Imperial Creek Placer Exploration projects

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### General

Although the 1872 Mining Law establishes a legal framework for mineral location and entry on the public lands, the Forest Service is not obligated to approve plans of operations if it does not fulfill the requirements of all other applicable laws and regulations. For Example, if the operator wishes to discharge any sediment, tailings, or effluent, including point sources from placer operations and or land application via hoses/sprinklers, an NPDES, section 404 dredge and fill permit, and Section 401 Certification must be obtained prior to approval of the plan of operations. This requirement is pursuant to a recent court decision, *Hells Canyon Preservation Council v. Haines*, 2006 WL 2252554 (D. Or. 2006), which ruled that suction dredges and placer operations constitute a point source discharge under the Clean Water Act. *Stream Channel Alteration permits from the Idaho Department of Water Resources do not fulfill this obligation.* Therefore the operator must obtain an NPDES permit from EPA first, prior to any discharge in association with placer mining.

### Claim Validity

The Forest Service needs to substantiate the validity of all associated claims. An objective validity analysis, including a marketability and prudent person test, needs to be performed to take into account the following factors:

- the means of access permitted, which will affect the commercial viability of the mining claim (see *Clouser vs. Espy*);
- current mineral prices;
- the increased expense of mitigation and monitoring measures required to comply with all federal and state laws including the National Forest Management Act standards and guidelines, the Nez Perce National Forest Plan, Riparian Habitat Conservation Areas, and PACFISH/INFISH guidelines;
- mitigation of impacts to species that have become threatened or endangered since the last validity test;
- mitigation measures for noxious weeds;
- current labor costs;
- current fuel costs;
- bonding requirements and costs.

### Threatened and Endangered Species

The US Forest Service must submit a biological assessment on all possible threats to listed species, including lynx, bull trout, Steelhead trout and any other listed species. The Forest Service must consult with the USFWS and NOAA - Fisheries. No incidental take permits should be authorized in association with these projects.

The Forest Service needs to describe, avoid, and mitigate potential impacts on lynx and wolverine. We are concerned that the increase in human activity, particularly with regard to the continual noise from drilling operations, will displace these species or prevent them from using these areas as corridors. As such, we encourage the Forest Service to limit the number of entries to the minimum needed and to only allow one drill pad to be operated at a time.

### **Riparian Habitat and Conservation Area Protection**

We appreciate that none of the proposed activities occur within a Riparian Habitat Conservation Area. At the same time, the scoping notice indicated that all projects would be "appropriately" buffered by at least 20 feet from streams or wetlands. It is unclear how a 20 foot buffer was determined to be appropriate. If monitoring indicates that 20 foot buffers are adequate to protect water resources, All operations must comply with the protective standards and regulations stated in the Forest Plan concerning mining, road construction, and tree removal. No Forest Plan amendments should be permitted.

It appears from the maps and project descriptions that activities will occur within RHCAs. Such mining and its effects on T,E and S species represents an extraordinary circumstance and an EA must be prepared. Further, the project analysis must consider Riparian Management Objectives and how they will be maintained and restored following project activities.

### **Hazardous materials**

All fuel and solvents need to be properly contained, labeled, and stored outside of Riparian Habitat Conservation Areas. Hazardous materials should be transported in small amounts to minimize impacts if there is a spill. A hazardous material plan needs to be in place in the event of a fuel or solvent leak anywhere along the transportation route. Hazardous wastes including grease, lubricants, oil, and fuels need to be disposed off off-site in an environmentally appropriate manner on a weekly basis. Fuel containment equipment, including chemical absorbers and booms to intercept stream transport need to be on site. All workers need to be trained in the use of this equipment.

### **Monitoring**

We have encountered numerous mining projects that have violated BMPs and operating plans. Unfortunately, monitoring has been insufficient to discover these problems in a timely fashion. Monitoring should be conducted at weekly intervals throughout the mining operation and throughout reclamation. The Forest Service should establish noise limits such that disturbance to surrounding wildlife is minimized and require the operator to abide by these limits.

### **Noxious Weeds**

Ground disturbance and vehicular traffic will accelerate the spread of noxious weeds, an ecological problem of epidemic proportions. All equipment should be cleaned to dislodge any soil, seeds, and vegetation before entering National Forest system

property. Work crews trained in noxious weed recognition and removal should patrol the project area. Weeds or microtrash should be removed. These stipulations need to be included in the Plan of Operations.

### **Sumps**

If sumps are proposed for use, drilling operations should be suspended if the sump approaches capacity to allow infiltration to occur.

### **Water for drilling**

Regarding water withdrawal for mining operations, the designated water pumping location needs to minimize impacts on riparian vegetation and soil disturbance. The water pump needs to be properly lined with an impermeable liner to protect the soil from the full volume of diesel fuel or oil in case there is a leak. The timing of water withdrawal should be defined to avoid impacts to aquatic organisms and T, E and S species.

### **Water Quality Protection**

Mining exploration has a well-documented history of adversely impacting water quality. All drilling activities need to be conducted outside of Riparian Habitat Conservation Areas. We recommend the use of directional drilling to reduce surface disturbances and minimize the number of drill pads needed.

Weed-free straw bales should line any drainages to protect streams from sedimentation and be removed upon completion of operations. If any drilling fluids contain any contaminants, sumps should be double lined and have a leak detection and removal system to prevent groundwater contamination. The sump containers should be large enough to contain all contaminants as well as precipitation from 24-hour, 100 year rainfall events.

The Forest Service should require the use of best management practices (BMPs) including water bars, rolling dips, and silt fences in a manner that minimizes water quality impacts.

To help address impacts on water quality from the drilling activity itself, the Forest Service should require additional mitigation measures for test holes near riparian areas. The information included within the scoping notice was insufficient to demonstrate that establishing 20 foot buffers adjacent to streams and wetlands is sufficient to meet the requirements pursuant to the Clean Water Act, PACFISH, and/o Idaho's Groundwater Rules.

The effects of mining activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions at the mining site and along the transportation routes. This geochemical analysis should include the following factors:

- sedimentation
- transportation of hazardous or toxic materials

- on-site water needs
- source of water
- the depth and flow of water table
- drilling depth
- the potential for chemicals and toxins to leach into surface and ground waters
- water capture and subsequent leakage by sumps
- waste water discharge from site
- storm water runoff

The core samples should also be tested for acid mine drainage and heavy metals contamination.

Groundwater from the trenches is required to meet the recently implemented Idaho State Groundwater Standards. If the operator chooses to apply to the Department of Environmental Quality for an exemption from the groundwater standards, we hereby request notification. What's more, we feel that the gravel washing facilities also require a NPDES permit as a point source.

### **On-Site Living Situation**

The Forest Service needs to specify whether mine operators will be living on or off-site with regard to any of these proposals. All garbage must be disposed of appropriately in a timely fashion. To avoid contaminating the area with human feces, a portable toilet river-running style toilet should be located on the site and serviced regularly. To minimize impacts to recreationists and wildlife, operations should be limited to daylight hours and generators should be limited to campground hours. Regularly inspected fire extinguishers and shovels need to be placed in all vehicles. To reduce risks of fires, all on-site burning should be conducted within a fire pan or fire ring. Only combustible materials should be placed within the fire ring. Burning should not be allowed during moderate to high fire risk periods.

### **Hours of operation**

We are also concerned about recreational and wildlife impacts in terms of noise and site occupation. Water pumping and drilling should be limited to daylight hours to reduce impacts on recreationists and wildlife.

### **Length of operation**

All activities need to be completed within one year from issuance of the permit or the bond should be forfeited.

### **Cumulative effects**

The Forest Service needs to analyze cumulative effects from past, current, and foreseeable mining, timber, or recreational activities in and around the project area.

### **Reclamation and Bonding**

The reclamation of the area must take place concurrently with the mining operation and return the site to a more natural condition than presently exists. Only one drill hole should operate at one time. We believe that additional obliteration of non-system roads and riparian restoration should be core components of any reclamation plan. Any topsoil or large woody debris should be salvaged and replaced following operations. This bond should cover refilling all trenches, drill holes, stabilizing waste rock piles, lining and capping mining wastes, recontouring and revegetating the site, removing noxious weeds, and naturalizing the area. Complete reclamation should occur as soon as possible after operations cease. All reclamation activities should be complete by Fall 2011.

